



Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D.C. 20554

02-278

CGB

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Control No. 0403840

The Honorable Robert C. Byrd
United States Senate
311 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Byrd:

Thank you for your letter on behalf of your constituent, Mr. Stuart Discount, President of Tele-Response Center Incorporated, regarding the Commission's recent amendments to its rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). Specifically, Mr. Discount explains that, in his view, the Commission has failed to declare and enforce its "clear exclusive jurisdiction over interstate telecommunications and telemarketing calls." According to Mr. Discount, the Commission has instead allowed states to go beyond federal law in their regulation and enforcement of state telemarketing laws.

On July 3, 2003, the Commission released a Report and Order in CG Docket No. 02-278, which adopted rules establishing a national do-not-call registry and other amendments to its telemarketing rules. The national do-not-call registry is nationwide in scope, includes all telemarketers, with the exception of certain non-profit organizations, and covers both interstate and intrastate telemarketing calls.

In establishing the national do-not-call registry, we recognized that states traditionally have had jurisdiction over only intrastate calls, while the Commission has had jurisdiction over interstate calls. However, Congress enacted section 227 and amended section 2(b) of the Communications Act to give the Commission jurisdiction over both interstate and intrastate telemarketing calls. Congress did so based upon the concern that states lack jurisdiction over interstate calls. We also noted that, although section 227(e) gives states authority to impose more restrictive intrastate regulations, we believe that it was the clear intent of Congress generally to promote a uniform regulatory scheme under which telemarketers would not be subject to multiple, conflicting regulations.

Therefore, we concluded that any state regulation of interstate telemarketing calls that differs from our rules almost certainly would conflict with and frustrate the federal scheme and almost certainly would be preempted. We indicated that the Commission will consider any alleged conflicts between state and federal requirements and the need for preemption on a case-by-case basis. Accordingly, any party that believes a state law is inconsistent with section 227 or our rules may seek a declaratory ruling from the Commission. We reiterated the interest in uniformity – as recognized by Congress – and encouraged states to avoid subjecting telemarketers to inconsistent rules.

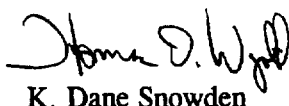
Following the release of the July 2003 Report and Order, the Commission received over 60 petitions for reconsideration and/or clarification of the amended rules. In addition, the Commission recently received five petitions for declaratory ruling seeking preemption of certain state telemarketing laws. These petitions are currently under review and pending before the Commission. Therefore, we have placed a copy of your correspondence in the public record for these proceedings.

Enclosed is additional information that Mr. Discount may find helpful. The Commission has available an e-mail service designed to apprise consumers about developments at the Commission, to disseminate consumer information materials prepared by the Commission to a wide audience and to invite comments from other parties on Commission regulatory proposals. This free service enables consumers to subscribe and receive FCC fact sheets, consumer brochures and alerts, and public notices, among other consumer information. To subscribe, an individual should send an e-mail to subscribe@info.fcc.gov and, in either the subject line or the message insert: "subscribe fcc-consumer-info first name last name" (e.g., "subscribe fcc-consumer-info John Doe").

We invite Mr. Discount to visit the Consumer & Governmental Affairs Bureau's Internet web site at <http://www.fcc.gov/cgb>. Information on all telecommunications-related issues can be accessed via the Internet from the Commission's Home Page located at <http://www.fcc.gov>. Information is also available by calling toll free 1-888-225-5322. TTY users may call 1-888-835-5322.

We appreciate your inquiry. If you have any further questions or require additional information, please do not hesitate to contact us.

Sincerely,


K. Dane Snowden

Chief

Consumer & Governmental Affairs Bureau

Enclosures

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3840

November 23, 2004

Ms. Diane Atkinson
Congressional Liaison Specialist
Federal Communications Commission
445 Twelfth Street, S.W., Room 8-C453
Washington, D.C. 20554

Dear Ms. Atkinson:

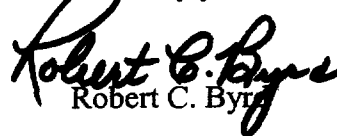
The enclosed communication is respectfully referred for your consideration, since it appears to be a matter that falls within your jurisdiction.

I would appreciate your looking into this matter and providing me with comments that might serve as the basis for a reply to my constituents.

Thank you in advance for your prompt attention to this matter.

With kind regards, I am

Sincerely yours,


Robert C. Byrd

RCB:es

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**Tele-Response
Center
Incorporated**

September 24, 2004

The Honorable Robert Byrd
Ranking Member
Senate Appropriations Committee
300 Virginia Street East, Ste. 2630
Charleston, WV 25301

Dear Senator Byrd:

I am writing to you as an owner of a teleservices company in West Virginia, which employs hundreds of workers. I and some other teleservices executives with call centers in West Virginia would like to meet with you regarding a matter of crucial importance that affects both our business interests and many of your constituents. There is concern about the lack of enforcement by the Federal Communications Commission (FCC), which has jurisdiction over interstate telecommunications, of their duty to enforce federal laws regarding telemarketing.

Specifically, the concern is that despite having clear exclusive jurisdiction over interstate telecommunications and telemarketing calls, the FCC has failed to declare and enforce that jurisdiction. Instead, it has allowed states to exceed federal law in their regulation and enforcement of interstate telemarketing. This has forced sellers and telemarketers to seek preemption of state laws on a case-by-case basis - a costly and time-consuming requirement.

State Regulations cover subjects already fully addressed in Federal Regulations. These regulations, as applied to interstate telemarketing, impose enormous compliance burdens and risks on sellers and telemarketers, without a demonstrable corresponding increase in consumer privacy or protection. In short, they are unnecessary and unfair, and cost American jobs.

I hope that you will grant a group of West Virginia call center executives the opportunity to visit with you and share our concerns in person and relate to you how they impact our employees and your constituents in West Virginia. Again, we are grateful for your attention to this matter. Please contact my associate, Jon Alexander, at 202/296-6222 to set up an appointment so that we may discuss this issue of vital importance to our businesses.

Sincerely,

Stuart Discount
President

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